

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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MARGUERITE HANAKEAWE aka Marguerite Hanakeawe Johnston,  
and DENNIS HANAKEAWE,  
Plaintiffs-Appellants/Appellees/Cross-Appellees,

and

OLIVIA MAILE, MEDEIROS AQUINO, JOYCE LOKELANI OLGA MEDEIROS  
FARIAS, DIANA KILANI HANAKEAWE FURTADO, RICHARD SEMONA GAUDIA,  
RUBEN HINANO GAUDIA, OLINDA APRIL KALEI CAPISO GAUDIA  
KAMAKAHI, ODELLA PIILANI GAUDIA NAKANELUA, DAVID KALEI  
HANAKEAWE, DORIS KAULAAIHAWANE KAMAHELE HANAKEAWE,  
DENISE KAIULANI HANAKEAWE, DONNA KILOHANA HANAKEAWE,  
DUANE KAIPO HANAKEAWE, DAVERY KAMANU HANAKEAWE,  
DUENNA KUUIPO HANAKEAWE, FRANCINE LOLA KAMAILE ESCALONA  
PESTANA, and DORIS KALUA HANAKEAWE PREUSS,  
Appellants/Appellees/Cross-Appellees,

vs.

LEHO MANAGEMENT CO., INC., a corporation, KBD, INC.,  
a Nevada Corporation, NAKILUA HEIRS OF NAKILAU, KEAKA,  
HEIRS OF KEAKA, KOHANANUE aka Kahananui aka Hananui,  
HEIRS OF KOHANANUE, KEKUHAWA, HEIRS OF KEKUHAWA, KEKAA,  
HEIRS OF KEKAA, C.C. EAKIN, HEIRS OF H.P. EAKIN, SARAH  
KALAHIKI, HEIRS OF SARAH KALAHIKI, STATE OF HAWAI'I,  
DEPARTMENT OF LAND AND NATURAL RESOURCES, UNITED STATES OF  
AMERICA, by its National Parks Service, NATIONAL PARK SERVICE,  
JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE  
ENTITIES 1-10, DOE GOVERNMENTAL AGENCIES 1-10, and all other  
NOTICE persons, firms, corporations claiming any right,  
title and interest or lien in the real properties described  
in Plaintiffs' complaint, by, thorough or under any named  
Defendant and Unknown persons generally,  
Defendants-Appellees/Appellees/Cross-Appellees,

and

NANSAY HAWAII, INC., a Hawaii Corporation,  
Defendant-Crossclaimant-Appellee/Appellee/Cross-Appellant,

and

HEIRS OF KAPENA, HEIRS OF NAAUKIUKIU, HEIRS OF KEAKA,  
HEIRS OF KEKUHAWA, HEIRS OF KOHANANUI aka Kahananui or

Hananui, HEIRS OF KAHAPEA, HEIRS OF KEKAA, HEIRS OF KALIHIOLE, HEIRS OF S.W. KAHAPEA, HEIRS OF JOSEPH NALUA KAHAPEA, HEIRS OF DANIEL ALIELA KAHAPEA, HEIRS OF KAIWI KAHAPEA, HEIRS OF FRANK PIULU KAHAPEA, HEIRS OF MABEL KALEI KAHAPEA, HEIRS OF MARVIN ARRUDA, HEIRS OF MARY KAIWI KAHAPEA KAELEMAKULE, HEIRS OF FRANK KAHAPEA, HEIRS OF KALEI KAHAPEA, JOSEPH NAILAU, JR., ESTATE OF MARGUERITE HANAKEAWE JOHNSTON, JOYCE LOLEKANI OLGA FARIAS, OLIVIA MAILE MEDEIROS AQUINO, RICHARD SIMEONA GAUDIA, ODELLA PIILANI NAKANELUA, OLINDA A.K.C. KAMAKAHI, FRANCINE L.K. PESTANA, HEIRS OF DAVID KANE HANAKEAWE, DONNA KILOHANA HANAKEAWE, DIANA KILANI FURTADO, DUENA KUUPIO HANAKEAWE, DAVID KALEI HANAKEAWE, DORIS KAPIOLANI PREUSS, DUANE KAIPU HANAKEAWE, DENISE KAIULANI HANAKEAWE, DAVERY KAMANU HANAKEAWE, HEIRS OF SARAH KALAHIKI, HEIRS OF SARAH UNEA WO MUN WON, HEIRS OF JOSEPH KAMAKA, ULULANI HUDDLESTON, MARIAN CHANNELS, DORIS RUFINO, GLEN LILINOE, GEORGE LILINOE, GAIL PERREIRA, JOANN LEE, KAREN LILINOE, TRACY LILINOE, ALAN LILINOE, JOHN HUDDLESTON, JOHANNAH HUDDLESTON, HEIRS OF LILIAN WHITE, NATHAN WHITE, GREG WHITE, HEIRS OF EDWARD AIWOHI, ALICE PA, HEIRS OF ROSE KAHELE AIWOHI KOKI, CHARLENE KOKI aka Charlene Dew, ELMYRA SILVER, HEIRS OF SARAH KAWAI BERRY, HEIRS OF THEMA REESE, HEIRS OF WILLIAM REESE, BARBARA ARRUDA, HEIRS OF EDWARD REESE, ERNEST KALAHIKI, SHEILA FULLER, HEIRS OF H.P. EAKIN, DOROTHY EAKIN BAGLEY, WILLIAM H.C. EAKIN, HEIRS OF GERTRUDE EAKIN KING, SANDRA NELSON, PATRICIA ESKENAZI, HEIRS OF NAKILAU, ROBERT FREITAS, AMY FREITAS, PHOEBE GOMES, ROSELINE BORING, ROSE BLACKBURN, STATE OF HAWAII, JOHN DOES 1-100, JANE DOES 1-100, DOE CORPORATIONS 1-10, DOE ENTITIES 1-10, DOE GOVERNMENTAL AGENCIES 1-10, and all other persons, firms and corporations claiming any right, title and interest or lien in the real properties described in Plaintiffs' Complaint, by, through, or under any named party and Unknown persons generally, Crossclaim-Defendants-Appellees/Appellees/Cross-Appellees,

and

KATHY K. ARRUDA, MARVIN KALEOOKALANI ARRUDA, ROBYNN K.M.Y. ELLIOTT, LAURIE ANN KALEI KALAMA, MARCIA HEIDI ESTOCADO, RICHARD ESTOCADO, RICHARD LEE ESTOCADO, BERNICE J.K. LEIALOHA, MAXINE ESTOCADO, WINONA A. BELL, LANNY ARRUDA, PRISCILLA REED-ARRUDA, MELBA MAE EVANOFF, DARMON ARRUDA, MANULEEN LAW, DAYTON ARRUDA, JO ANN ARRUDA, DOUGLAS ARRUDA, NADINE MEDEIROS, LANCE ARRUDA, ROCHELLE WALLER, THOMAS KAELEMAKULE, FRANK KANUI POOHIWI KAHAPEA, ROBERTA KAHAPEA BEE, SYLVESTER K. KAHAPEA, ROBERT J.K. KAHAPEA, RONALD K. KAHAPEA, CHESTER FRANK P. KAHAPEA, LURLINE KAHAPEA, JOSEPH NALUA KAHAPEA, GEORGE P.K. KAHAPEA, Crossclaim-Defendants-Appellees/Appellants/Cross-Appellees.

APPEAL FROM THE THIRD CIRCUIT COURT  
(CIV. NO. 90-316K)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Ramil, JJ., and  
Circuit Court Judge G. Chang, Assigned by Reason of Vacancy)

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised in these consolidated appeals,<sup>1</sup> we note that, on January 21, 1999, the circuit court, the Honorable Ronald Ibarra presiding, entered a judgment and decree quieting title to some 442 acres of land known as Royal Patent Grant 3086 ("the property") in favor of the defendant-crossclaimant-appellee/appellee/cross-appellant Nansay Hawaii, Inc. and against the plaintiffs-appellants/appellees/cross-appellees the Estate of Marguerite Hanakeawe (aka Marguerite Hanakeawe Johnston), Dennis Kane Hanakeawe (aka Dennis Hanakeawe), Olivia Maile Medeiros Aquino, Joyce Lokelani Olga Medeiros Farias, Diana Kilani Hanakeawe Furtado, Richard Semon Gaudia, Ruben Hinano Gaudia, Olinda April Kalei Capiso Gaudia Kamakahi, Odella Piilani Gaudia Nakanelua, David Kalei Hanakeawe, Doris Kaulaaihawane Kamahela Hanakeawe, Denise Kaiulani Hanakeawe, Donna Kilohana Hanakeawe, Duane Kaipo Hanakeawe, Davery Kamanu Hanakeawe, Duenna Kuipo Hanakeawe, Francine Lola Kamaile Escalona Pestana, and Doris Kalua Hanakeawe Preuss, who are lineal descendants of Kalei Kahapea, deceased, (collectively, "the heirs of Kalei Kahapea"), and against the crossclaim defendants-appellees/appellants/cross-appellees Dayton Arruda,

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<sup>1</sup> By order dated June 17, 1999, this court consolidated Nos. 22381, 22436, and 22527 under No. 22381. A single record on appeal was transmitted under No. 22381 which includes the record for Nos. 22436 and 22527.

Darmon Arruda, Douglas Arruda, Kathy K. Arruda, Jo Ann Arruda, Lance Arruda, Lanny Arruda, Marvin Kaleookalani Arruda, Roberta Kahapea Bee, Winona A. Bell, Robyn K.M.Y. Elliott, Laurie Ann Kalei Kalama, Marsha Heidi Estocado, the Estate of Maxine Estocado, Richard Estocado, Richard Lee Estocado, Melba Mae Evanoff, Thomas Kaelemakule, George P.K. Kahapea (aka Chester George P.K. Kahapea), Chester Frank P. Kahapea, Frank Kanui Poohiwi Kahapea, Joseph Nalua Kahapea (aka Nalua Joseph Kahapea), Lurline Kahapea, Robert J.K. Kahapea, Ronald K. Kahapea, Sylvester K. Kahapea, Mauleen Law, Bernice J.K. Leialoha, Nadine Medeiros, Priscilla Reed Arruda, and Rochelle Walker, who are lineal descendants of Frank Piulu Kahapea, deceased, (collectively, "the heirs of Frank Piulu Kahapea"). The January 21, 1999 judgment was certified under Hawai'i Rules of Civil Procedure (HRCP) Rule 54(b) as a final judgement.

On January 27, 1999, Nansay Hawaii filed a motion to amend the January 21, 1999 judgment to correct a technical error in an appendix containing a description of the property by metes and bounds. The January 27, 1999 motion was thus a motion to correct a clerical error pursuant to HRCP Rule 60(a) (1999) and not a motion to alter or amend judgment pursuant to HRCP Rule 59(e) (1999). See Kalawaia v. AIG Hawaii Ins. Co., 90 Hawai'i 167, 172 n.8, 977 P.2d 175, 180 n.8 (1999) ("Where the motion to amend the judgment is only to correct a clerical mistake, HRCP Rule 60(a) would apply."); Madden v. Madden, 43 Haw. 148, 149-50 (1959) ("Under the rules, the substance of the pleading controls, not the nomenclature given to the pleading."); Ditto v. McCurdy, 86 Hawai'i 93, 112, 947 P.2d 961, 980 (App. 1997) (citing Osterneck v. Ernst & Whinney, 489 U.S. 169 (1989)); Brown v. Local 58, International Bd. of Elec. Workers, AFL-CIO, 76 F.3d

762, 768 (6th Cir. 1996); United States v. Deutsch, 981 F.2d 299, 301 n.2 (7th Cir. 1992); Miller v. Transamerican Press, Inc., 709 F.2d 524, 527 (9th Cir. 1983); cf. Korsak v. Hawaii Permanente Medical Group, 94 Hawai'i 297, 303-05, 12 P.3d 1238, 1244-46 (2000). Therefore, Nansay Hawaii's January 27, 1999 motion did not affect the time within which to file a notice of appeal pursuant to Hawai'i Rules of Appellate Procedure (HRAP) Rule 4(a)(4) (1999). See Whitman v. Whitman, 91 Hawai'i 468, 469-70, 985 P.2d 659, 660-61 (1999).

In No. 22436, the heirs of Frank Piulu Kahapea filed a notice of appeal on April 5, 1999, and Nansay Hawaii filed a notice of cross-appeal on April 9, 1999. Inasmuch as the April 5, 1999 and April 9, 1999 notices of appeal were filed more than thirty days after the entry of the January 21, 1999 judgment, they were untimely, and this court is without jurisdiction to consider the heirs of Frank Piulu Kahapea's appeal and Nansay Hawaii's cross-appeal. See HRAP Rule 4(a)(1) (1999).

Accordingly, the appeal and cross-appeal in No. 22436 are dismissed.

We further note that, in No. 22527, the heirs of Kalei Kahapea appealed the circuit court's April 20, 1999 judgment, which resolved claims between Nansay Hawaii and the State of Hawai'i. Those claims did not affect the heirs of Kalei Kahapea's claims in the present matter. Therefore, the heirs of Kalei Kahapea did not have any stake in the outcome of the dispute between Nansay Hawaii and the State of Hawai'i and are without standing to appeal the April 20, 1999 judgment. See Akinaka v. Disciplinary Bd. of Hawai'i Supreme Court, 91 Hawai'i 51, 55, 979 P.2d 1077, 1081 (1999). Accordingly, the heirs of Kalei Kahapea's appeal in Appeal No. 22527 is dismissed.

With respect to the circuit court's January 21, 1999 judgment and decree, we resolve the heirs of Kalei Kahapea's points of error in No. 22381, in which a timely notice of appeal was filed on February 19, 1999, as follows:

(1) The heirs of Kalei Kahapea argue that the circuit court erred in failing to rule that the designation of Samuel W. Kahapea as the sole taxpayer for the property at issue in the present matter on the tax assessment lists for the period 1894 through 1927 established as a matter of law that he (a) received an interest in the property from his mother, KalihiOLE, in 1894, (b) did not convey all his interest in the property to C.C. Eakin in 1898, (c) owned an interest in the property at the time of his death in 1924, and (d) acquired an interest in the property by adverse possession. We hold that the designation of Samuel W. Kahapea as the sole taxpayer for the property, in and of itself, was insufficient to establish his ownership of the property in the absence of additional evidence of ownership. See State ex rel. Kobayashi v. Zimring, 58 Haw. 106, 117, 566 P.2d 725, 733 (1977); cf. State v. Simeona, 10 Haw. App. 220, 247-48, 864 P.2d 1109, 1121-22 (1993). We further hold that substantial evidence supported the jury's findings (a) that KalihiOLE conveyed all her interest in the property to Pua Hoohuli, Kekaa Kahiewalu, and Joseph Nalua Kahapea by deed dated August 29, 1894 and that she did not convey any interest in the property to Samuel W. Kahapea by deed dated August 30, 1894 and (b) that Samuel W. Kahapea conveyed all his interest in the property to C.C. Eakin by deed dated May 6, 1898. Therefore, the circuit court did not err in entering a judgment in accordance with these findings. Finally, we hold that the designation of Samuel W. Kahapea as the taxpayer for the property on the tax assessment lists for the years 1898

through 1927, in and of itself, was insufficient to establish his ownership of the property as a matter of law by adverse possession. Cf. Okuna v. Nakahuna, 60 Haw. 650, 655 & n.3, 594 P.2d 128, 131 & n.3 (1979); Lai v. Kukahiko, 58 Haw. 362, 367-68, 569, P.2d 352, 356 (1977); Deponte v. Ulupalakua Ranch, 48 Haw. 17, 20, 395 P.2d 273, 275 (1964).

(2) The heirs of Kalei Kahapea argue that the circuit court erred in ruling that Nansay Hawaii was the prevailing party for the purpose of assessing costs in this action, when, according to the special verdict, Nansay Hawaii perfected its title by acquiring C.C. Eakin's interest during the proceedings in the present matter. We hold that Nansay Hawaii was the prevailing party in the present matter within the meaning of HRCF Rule 54(d) (1999). See Wong v. Takeuchi, 88 Hawai'i 46, 49, 961 P.2d 611, 614 (1998).

Therefore,

IT IS HEREBY ORDERED that the circuit court's judgment and decree, filed on January 21, 1999, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, October 30, 2001.

On the briefs:

Stephen K. Yamashiro for  
the plaintiffs-appellants/  
appellees/cross-appellees  
the estate of Marguerite  
Hanakeawe (aka Marguerite  
Hanakeawe Johnston),  
Dennis Kane Hanakeawe  
(aka Dennis Hanakeawe)  
Olivia Maile Medeiros Aquino,  
Joyce Lokelani Olga Medeiros  
Farias, Diana Kilani Hanakeawe  
Furtado, Richard Semon Gaudia,  
Ruben Hinano Gaudia, Olinda

April Kalei Capiso Gaudia  
Kamakahi, Odella Piilani Gaudia  
Nakanelua, David Kalei Hanakeawe,  
Doris Kaulaaihawane Kamahela  
Hanakeawe, Denise Kaiulani  
Hanakeawe, Donna Kilohana  
Hanakeawe, Duane Kaipō Hanakeawe,  
Davery Kamanu Hanakeawe, Duenna  
Kuuipo Hanakeawe, Francine Lola  
Kamaile Escalona Pestana, and  
Doris Kalua Hanakeawe Preuss

Richard N. Wurdeman for  
the crossclaim defendants-  
appellees/appellants/cross-  
appellees Dayton Arruda,  
Darmon Arruda, Douglas Arruda,  
Kathy K. Arruda, Jo Ann Arruda,  
Lance Arruda, Lanny Arruda,  
Marvin Kaleookalani Arruda,  
Roberta Kahapea Bee, Winona A.  
Bell, Robyn K.M.Y. Elliott,  
Laurie Ann Kalei Kalama,  
Marsha Heidi Estocado, the  
Estate of Maxine Estocado,  
Richard Estocado, Richard Lee  
Estocado, Melba Mae Evanoff,  
Thomas Kaelemakule, George P.K.  
Kahapea (aka Chester George P.K.  
Kahapea), Chester Frank P. Kahapea,  
Frank Kanui Poohiwi Kahapea,  
Joseph Nalua Kahapea (aka Nalua  
Joseph Kahapea), Lurline Kahapea,  
Robert J.K. Kahapea, Ronald K.  
Kahapea, Sylvester K. Kahapea,  
Mauleen Law, Bernice J.K. Leialoha,  
Nadine Medeiros, Priscilla Reed  
Arruda, and Rochelle Walker

Michael W. Gibson and Francis  
P. Hogan (of Ashford & Wriston)  
for the defendant-crossclaimant-  
appellee/appellee/cross-appellant  
Nansay Hawaii, Inc.